

118TH CONGRESS
1ST SESSION

S. 954

To provide for appropriate cost-sharing for insulin products covered under private health plans, and to establish a program to support health care providers and pharmacies in providing discounted insulin products to uninsured individuals.

IN THE SENATE OF THE UNITED STATES

MARCH 23, 2023

Mr. WARNOCK (for himself and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide for appropriate cost-sharing for insulin products covered under private health plans, and to establish a program to support health care providers and pharmacies in providing discounted insulin products to uninsured individuals.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Affordable Insulin Now
5 Act of 2023”.

1 **SEC. 2. APPROPRIATE COST-SHARING FOR INSULIN PROD-**
 2 **UCTS COVERED UNDER PRIVATE HEALTH**
 3 **PLANS.**

4 (a) IN GENERAL.—Part D of title XXVII of the Pub-
 5 lic Health Service Act (42 U.S.C. 300gg–111 et seq.) is
 6 amended by adding at the end the following:

7 **“SEC. 2799A–11. REQUIREMENTS WITH RESPECT TO COST-**
 8 **SHARING FOR CERTAIN INSULIN PRODUCTS.**

9 “(a) IN GENERAL.—For plan years beginning on or
 10 after January 1, 2024, a group health plan or health in-
 11 surance issuer offering group or individual health insur-
 12 ance coverage shall provide coverage of selected insulin
 13 products, and with respect to such products, shall not—

14 “(1) apply any deductible; or

15 “(2) impose any cost-sharing in excess of the
 16 lesser of, per 30-day supply—

17 “(A) \$35; or

18 “(B) the amount equal to 25 percent of
 19 the negotiated price of the selected insulin prod-
 20 uct net of all price concessions received by or on
 21 behalf of the plan or coverage, including price
 22 concessions received by or on behalf of third-
 23 party entities providing services to the plan or
 24 coverage, such as pharmacy benefit manage-
 25 ment services.

26 “(b) DEFINITIONS.—In this section:

1 “(1) SELECTED INSULIN PRODUCTS.—The term
2 ‘selected insulin products’ means at least one of each
3 dosage form (such as vial, pump, or inhaler dosage
4 forms) of each different type (such as rapid-acting,
5 short-acting, intermediate-acting, long-acting, ultra
6 long-acting, and premixed) of insulin (as defined
7 below), when available, as selected by the group
8 health plan or health insurance issuer.

9 “(2) INSULIN DEFINED.—The term ‘insulin’
10 means insulin that is licensed under subsection (a)
11 or (k) of section 351 and continues to be marketed
12 under such section.

13 “(c) OUT-OF-NETWORK PROVIDERS.—Nothing in
14 this section requires a plan or issuer that has a network
15 of providers to provide benefits for selected insulin prod-
16 ucts described in this section that are delivered by an out-
17 of-network provider, or precludes a plan or issuer that has
18 a network of providers from imposing higher cost-sharing
19 than the levels specified in subsection (a) for selected insu-
20 lin products described in this section that are delivered
21 by an out-of-network provider.

22 “(d) RULE OF CONSTRUCTION.—Subsection (a) shall
23 not be construed to require coverage of, or prevent a group
24 health plan or health insurance coverage from imposing
25 cost-sharing other than the levels specified in subsection

1 (a) on, insulin products that are not selected insulin prod-
2 ucts, to the extent that such coverage is not otherwise re-
3 quired and such cost-sharing is otherwise permitted under
4 Federal and applicable State law.

5 “(e) APPLICATION OF COST-SHARING TOWARDS
6 DEDUCTIBLES AND OUT-OF-POCKET MAXIMUMS.—Any
7 cost-sharing payments made pursuant to subsection (a)(2)
8 shall be counted toward any deductible or out-of-pocket
9 maximum that applies under the plan or coverage.”.

10 (b) NO EFFECT ON OTHER COST-SHARING.—Section
11 1302(d)(2) of the Patient Protection and Affordable Care
12 Act (42 U.S.C. 18022(d)(2)) is amended by adding at the
13 end the following new subparagraph:

14 “(D) SPECIAL RULE RELATING TO INSU-
15 LIN COVERAGE.—The exemption of coverage of
16 selected insulin products (as defined in section
17 2799A–11(b) of the Public Health Service Act)
18 from the application of any deductible pursuant
19 to section 2799A–11(a)(1) of such Act, section
20 726(a)(1) of the Employee Retirement Income
21 Security Act of 1974, or section 9826(a)(1) of
22 the Internal Revenue Code of 1986 shall not be
23 considered when determining the actuarial value
24 of a qualified health plan under this sub-
25 section.”.

1 (c) COVERAGE OF CERTAIN INSULIN PRODUCTS
2 UNDER CATASTROPHIC PLANS.—Section 1302(e) of the
3 Patient Protection and Affordable Care Act (42 U.S.C.
4 18022(e)) is amended by adding at the end the following:

5 “(4) COVERAGE OF CERTAIN INSULIN PROD-
6 UCTS.—

7 “(A) IN GENERAL.—Notwithstanding para-
8 graph (1)(B)(i), a health plan described in
9 paragraph (1) shall provide coverage of selected
10 insulin products, in accordance with section
11 2799A–11 of the Public Health Service Act, be-
12 fore an enrolled individual has incurred, during
13 the plan year, cost-sharing expenses in an
14 amount equal to the annual limitation in effect
15 under subsection (c)(1) for the plan year.

16 “(B) TERMINOLOGY.—For purposes of
17 subparagraph (A)—

18 “(i) the term ‘selected insulin prod-
19 ucts’ has the meaning given such term in
20 section 2799A–11(b) of the Public Health
21 Service Act; and

22 “(ii) the requirements of section
23 2799A–11 of such Act shall be applied by
24 deeming each reference in such section to
25 ‘individual health insurance coverage’ to be

1 a reference to a plan described in para-
2 graph (1).”.

3 (d) ERISA.—

4 (1) IN GENERAL.—Subpart B of part 7 of sub-
5 title B of title I of the Employee Retirement Income
6 Security Act of 1974 (29 U.S.C. 1185 et seq.) is
7 amended by adding at the end the following:

8 **“SEC. 726. REQUIREMENTS WITH RESPECT TO COST-SHAR-**
9 **ING FOR CERTAIN INSULIN PRODUCTS.**

10 “(a) IN GENERAL.—For plan years beginning on or
11 after January 1, 2024, a group health plan or health in-
12 surance issuer offering group health insurance coverage
13 shall provide coverage of selected insulin products, and
14 with respect to such products, shall not—

15 “(1) apply any deductible; or

16 “(2) impose any cost-sharing in excess of the
17 lesser of, per 30-day supply—

18 “(A) \$35; or

19 “(B) the amount equal to 25 percent of
20 the negotiated price of the selected insulin prod-
21 uct net of all price concessions received by or on
22 behalf of the plan or coverage, including price
23 concessions received by or on behalf of third-
24 party entities providing services to the plan or

1 coverage, such as pharmacy benefit manage-
2 ment services.

3 “(b) DEFINITIONS.—In this section:

4 “(1) SELECTED INSULIN PRODUCTS.—The term
5 ‘selected insulin products’ means at least one of each
6 dosage form (such as vial, pump, or inhaler dosage
7 forms) of each different type (such as rapid-acting,
8 short-acting, intermediate-acting, long-acting, ultra
9 long-acting, and premixed) of insulin (as defined
10 below), when available, as selected by the group
11 health plan or health insurance issuer.

12 “(2) INSULIN DEFINED.—The term ‘insulin’
13 means insulin that is licensed under subsection (a)
14 or (k) of section 351 of the Public Health Service
15 Act (42 U.S.C. 262) and continues to be marketed
16 under such section.

17 “(c) OUT-OF-NETWORK PROVIDERS.—Nothing in
18 this section requires a plan or issuer that has a network
19 of providers to provide benefits for selected insulin prod-
20 ucts described in this section that are delivered by an out-
21 of-network provider, or precludes a plan or issuer that has
22 a network of providers from imposing higher cost-sharing
23 than the levels specified in subsection (a) for selected insu-
24 lin products described in this section that are delivered
25 by an out-of-network provider.

1 “(d) RULE OF CONSTRUCTION.—Subsection (a) shall
 2 not be construed to require coverage of, or prevent a group
 3 health plan or health insurance coverage from imposing
 4 cost-sharing other than the levels specified in subsection
 5 (a) on, insulin products that are not selected insulin prod-
 6 ucts, to the extent that such coverage is not otherwise re-
 7 quired and such cost-sharing is otherwise permitted under
 8 Federal and applicable State law.

9 “(e) APPLICATION OF COST-SHARING TOWARDS
 10 DEDUCTIBLES AND OUT-OF-POCKET MAXIMUMS.—Any
 11 cost-sharing payments made pursuant to subsection (a)(2)
 12 shall be counted toward any deductible or out-of-pocket
 13 maximum that applies under the plan or coverage.”.

14 (2) CLERICAL AMENDMENT.—The table of con-
 15 tents in section 1 of the Employee Retirement In-
 16 come Security Act of 1974 (29 U.S.C. 1001 et seq.)
 17 is amended by inserting after the item relating to
 18 section 725 the following:

“Sec. 726. Requirements with respect to cost-sharing for certain insulin prod-
 ucts.”.

19 (e) INTERNAL REVENUE CODE.—

20 (1) IN GENERAL.—Subchapter B of chapter
 21 100 of the Internal Revenue Code of 1986 is amend-
 22 ed by adding at the end the following new section:

1 **“SEC. 9826. REQUIREMENTS WITH RESPECT TO COST-SHAR-**
2 **ING FOR CERTAIN INSULIN PRODUCTS.**

3 “(a) IN GENERAL.—For plan years beginning on or
4 after January 1, 2024, a group health plan shall provide
5 coverage of selected insulin products, and with respect to
6 such products, shall not—

7 “(1) apply any deductible; or

8 “(2) impose any cost-sharing in excess of the
9 lesser of, per 30-day supply—

10 “(A) \$35; or

11 “(B) the amount equal to 25 percent of
12 the negotiated price of the selected insulin prod-
13 uct net of all price concessions received by or on
14 behalf of the plan, including price concessions
15 received by or on behalf of third-party entities
16 providing services to the plan, such as phar-
17 macy benefit management services.

18 “(b) DEFINITIONS.—In this section:

19 “(1) SELECTED INSULIN PRODUCTS.—The term
20 ‘selected insulin products’ means at least one of each
21 dosage form (such as vial, pump, or inhaler dosage
22 forms) of each different type (such as rapid-acting,
23 short-acting, intermediate-acting, long-acting, ultra
24 long-acting, and premixed) of insulin (as defined
25 below), when available, as selected by the group
26 health plan.

1 “(2) INSULIN DEFINED.—The term ‘insulin’
2 means insulin that is licensed under subsection (a)
3 or (k) of section 351 of the Public Health Service
4 Act (42 U.S.C. 262) and continues to be marketed
5 under such section.

6 “(c) OUT-OF-NETWORK PROVIDERS.—Nothing in
7 this section requires a plan that has a network of providers
8 to provide benefits for selected insulin products described
9 in this section that are delivered by an out-of-network pro-
10 vider, or precludes a plan that has a network of providers
11 from imposing higher cost-sharing than the levels specified
12 in subsection (a) for selected insulin products described
13 in this section that are delivered by an out-of-network pro-
14 vider.

15 “(d) RULE OF CONSTRUCTION.—Subsection (a) shall
16 not be construed to require coverage of, or prevent a group
17 health plan from imposing cost-sharing other than the lev-
18 els specified in subsection (a) on, insulin products that are
19 not selected insulin products, to the extent that such cov-
20 erage is not otherwise required and such cost-sharing is
21 otherwise permitted under Federal and applicable State
22 law.

23 “(e) APPLICATION OF COST-SHARING TOWARDS
24 DEDUCTIBLES AND OUT-OF-POCKET MAXIMUMS.—Any
25 cost-sharing payments made pursuant to subsection (a)(2)

1 shall be counted toward any deductible or out-of-pocket
2 maximum that applies under the plan.”.

3 (2) CLERICAL AMENDMENT.—The table of sec-
4 tions for subchapter B of chapter 100 of such Code
5 is amended by adding at the end the following new
6 item:

“Sec. 9826. Requirements with respect to cost-sharing for certain insulin prod-
ucts.”.

7 (f) IMPLEMENTATION.—The Secretary of Health and
8 Human Services, the Secretary of Labor, and the Sec-
9 retary of the Treasury may implement the provisions of,
10 including the amendments made by, this subsection
11 through sub-regulatory guidance, program instruction or
12 otherwise.

13 **SEC. 3. REIMBURSEMENT FOR INSULIN FURNISHED TO UN-**
14 **INSURED INDIVIDUALS.**

15 (a) IN GENERAL.—The Secretary of Health and
16 Human Services (in this section referred to as the “Sec-
17 retary”) shall establish a program under which the Sec-
18 retary enters into agreements with qualifying entities for
19 purposes of furnishing insulin products to uninsured indi-
20 viduals.

21 (b) PAYMENT.—The Secretary shall pay to each
22 qualifying entity with an agreement in effect under this
23 section, with respect to each 30-day supply of insulin prod-
24 ucts furnished to an uninsured individual by such entity

1 on or after January 1, 2024, an amount equal to the dif-
2 ference between the out-of-pocket cost to the individual for
3 a 30-day supply of such insulin products and \$35.

4 (c) DEFINITIONS.—In this section:

5 (1) INSULIN PRODUCT.—The term “insulin
6 product” has the meaning given the term “insulin”
7 in section 2799A–11 of the Public Health Service
8 Act, as added by section 2.

9 (2) QUALIFYING ENTITY.—The term “quali-
10 fying entity” means a health care provider or phar-
11 macy that—

12 (A) agrees, with respect to an insulin prod-
13 uct furnished by such provider or pharmacy to
14 an uninsured individual after January 1, 2024,
15 for which payment is made by the Secretary
16 under this section, not to hold such individual
17 liable for any payment amount for such prod-
18 uct; and

19 (B) meets such other standards and re-
20 quirements as may be determined appropriate
21 by the Secretary.

22 (3) SPECIFIED HEALTH PLAN.—The term
23 “specified health plan” means a Federal health care
24 program (as defined in section 1128B of the Social
25 Security Act (42 U.S.C. 1320a–7b)), the health pro-

1 gram established under chapter 89 of title 5, United
2 States Code, a group health plan (as defined in sec-
3 tion 2791 of the Public Health Service Act (42
4 U.S.C. 300gg-91), and group or individual health
5 insurance coverage (as defined in such section
6 2791).

7 (4) UNINSURED INDIVIDUAL.—The term “unin-
8 sured individual” means, with respect to an indi-
9 vidual and an insulin product, an individual who
10 does not have benefits available for such product (or
11 for another insulin product of the same dosage form
12 (such as vial, pump, or inhaler dosage forms) and
13 type (such as rapid-acting, short-acting, inter-
14 mediate-acting, long-acting, ultra-long-acting, and
15 premixed)) under a specified health plan.

16 **SEC. 4. SENSE OF CONGRESS.**

17 It is the sense of Congress that subsequent legislation
18 should be enacted by Congress that provides for an offset
19 for any costs to the Federal Government resulting from
20 the enactment of this Act.

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